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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,776

11/13/2003

Richard S. Sanders

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10/22/2007

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EXAMINER

KAHELIN, MICHAEL WILLIAM

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

10/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,776

Applicant(s)

SANDERS, RICHARD S.

Examiner

Michael Kahelin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 57-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 57-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20070824.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6-10, 61, 65, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine (US 6,477,417, hereinafter "Levine").
3. In regards to claim 1, Levine discloses a sensing circuit (82, 84 and 108), a pacing circuit (70 and 78), and a processor that is upgradeable from a cardiac monitor controller to a cardiac pacemaker controller wherein the sensing circuit is adapted to be programmed from a far-field sensing configuration to an intracardiac electrogram sensing configuration (col. 2, line 2). The Examiner is interpreting this as an "upgrade" because it provides improved performance inasmuch as sensing and stimulating a local area of the heart. Further, the pacing circuit is adapted to be inactive when the device is configured to be the cardiac monitor and the pacemaker (col. 2, line 9), and the device is capable of producing pacing pulses when the device is configured to be the monitor or pacemaker. Since "triggered mode" is used by Levine's device, the pacing circuit is inactive between pulses (e.g., the disclosed "time-out" period) in either the monitor (far-field sensing) mode or pacemaker (near-field sensing) mode, but is also still capable of delivering pulses in either mode (e.g., after the "time-out" interval). The

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limitation "adapted to be inactive" does not require that the pacing circuit be inactive at *all* times, but merely at *some* time.

4. In regards to claim 6, the device comprises RAM containing control code (col. 9, line 54).

5. In regards to claim 7, the device comprises an activity sensor (col. 14, line 35).

6. In regards to claim 8, an electrogram is stored (col. 13, line 45).

7. In regards to claims 9 and 10, the device further comprises an activity detector comprising an arrhythmia detector (col. 13, lines 21-40).

8. In regards to claim 61, the configuration instructions are received via telemetry (col. 2, line 2).

9. In regards to claim 65, the sensing circuit is adapted to sense an activity signal (col. 14, line 20).

10. In regards to claim 66, the device comprises a cardiac resynchronization device (118).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 57-60 and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine. Levine discloses the essential features of the claimed invention including upgrading the device(s) via programming, but does not disclose a memory comprising a ROM portion and updatable/re-allocatable RAM portion, a safety operation mode during upgrading, configuration instructions comprising authorization information specific to the device being configured, or a configuration authorization module that generates a permission signal upon verification of authorization information. It is well known in the art to provide implantable cardiac stimulators with a memory comprising a ROM portion and updatable/re-allocatable RAM portion to provide a memory that is resistant to corruption and still modifiable for adapting to the heart's changing conditions; a safety (or fallback) operation mode during telemetry to prevent life-threatening arrhythmia when the processor is busy with communication functions; and a handshake protocol specific to the device being configured to ensure that the instructions being telemetered to a device are appropriate for the specific device implanted in the patient. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Levine's device with a memory comprising a ROM portion and updatable/re-allocatable RAM portion to provide the predictable results of providing a memory that is resistant to corruption and still modifiable for adapting to the heart's changing conditions; a safety (or fallback) operation mode during telemetry to provide the predictable result of preventing life-threatening arrhythmia when the processor is busy with communication functions; and a handshake protocol specific to the device being configured to provide the predictable

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result of ensuring that the instructions being telemetered to a device are appropriate for the specific device implanted in the patient.

13. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine in view of Morgan (US 5,024,221, hereinafter "Morgan"). Levine discloses the essential features of the claimed invention except for band-pass filters having programmable filter coefficients with the claimed frequency ranges. Morgan teaches of providing a cardiac stimulator with a programmable band-pass filter (i.e. a first and second filter) to fit the frequency characteristics to the particular implantation (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a cardiac stimulator with a programmable band-pass filter to provide the predictable result of fitting the frequency characteristics to the particular implantation.

14. Further, Levine in view of Morgan discloses the claimed invention but does not disclose expressly the claimed cutoff frequencies. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify filters as taught by Levine in view of Morgan with the claimed cutoff frequencies because applicant has not disclosed that these frequencies provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the filters as taught by Levine in view of Morgan because both filters effectively eliminate extraneous noise for a particular implantation configuration. Therefore, it would have been an obvious matter

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of design choice to modify Levine in view of Morgan's cutoff frequencies to obtain the invention as specified in the claims.

Response to Arguments

15. Applicant's arguments with respect to claims 1-10 and 57-66 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWK

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10/16/07

GEORGE R. EVANISKO
PRIMARY EXAMINER

10/19/07